IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2002

CORAM:

THE HONOURABLE MR. JUSTICE K. GOVINDARAJAN

S.A.Nos.384 of 2000 and S.A.Nos. 385 of 2000

A.Ramakrishnan .. Appellant in both S.As.
Vs.

1.S.Mallikarjuna Raju
2.M.Ramasamy Raju ..Respondents both S.As.

Appeal against judgments and decrees in A.S.Nos.24 and 25 of 1999 on the file of Principal District Judge, Sivaganga, reve
judgments and decrees in O.S.Nos.49/1996 and 107/98 on the file of Sub Court, Sivaganga.

! For Appellant .. Mr.S.Natarajan
^ For Respondents.. Mr.R.Subramanian,
for R1
No Appearance for R2.

: JUDGMENT:

The plaintiff filed O.S.Nos.49/96 and 107/98 impleading the appellant as 1st defendant and 2nd defendant respectively seeking a decree for declaration that the suit property belongs to the joint family excluding Ramasami Raju, the 2nd defendant in O.S.No.49/96 and for possession. The plaintiff/1st respondent claims that he is the manager of the joint family and the said Ramasami Raju got himself divided after receiving money towards his share in the joint family property. According to the plaintiff, the appellant/Ramakrishnan had been in possession of the suit property as a tenant. He obtained a sale deed from the said Ramasami Raju on 3.3.89 with respect to the shops bearing Door Nos.148 and 151. But, according to the plaintiff, the said sale deed will not bind on the joint family, as the said Ramasami Raju has no right to sell the said property.

2.Insofar as O.S.No.107/98 is concerned, it is the case of the plaintiff that the 1st defendant Ramu alias Ramayee was the tenant and the appellant/Ramakrishnan cannot claim any right in the suit property also on the basis of the said sale deed.

3.The appellant/Ramakrishnan contested the suits contending inter alia that though he was in possession of the property as a tenant with respect to Door No.148, he purchased

the property from the co-owner one Ramasami Raju and so he cannot be evicted as sought for. Even assuming that he has to be treated as a tenant, the suit for recovery of possession before civil court is not sustainable in law. With respect to the suit in O.S.No.107/98 it is the case of the appellant that after purchase of the joint family property from Ramakrishna Raju, he had taken over possession from the tenant and he has been in possession of the property. On that basis the suit for recovery of possession cannot be sustained in law.

4.The trial court tried the suits jointly and found that the suit property belongs to the joint family including Ramasami Raju by rejecting the case of the plaintiff that Ramasami Raju went out of the joint family after releasing the right by receiving money. On the basis that the appellant has been in possession of the joint family property as tenant, the trial court has rejected the prayer for possession as sought for by the plaintiff. So, the plaintiff filed appeal in A.S.Nos.24 and 25 of 1999 on the file of the Principal District Judge, Sivaganga. The learned Principal District Judge though confirmed the findings of the trial court that the suit property is the joint family property including Ramasami Raju, allowed the Appeals granting the relief even for possession as prayed for by the plaintiff. Hence the appellant has filed the above Second Appeals.

5.The substantial questions of law that were formulated in these Second Appeals are:

(1)Even assuming that the plaintiff as manager of Hindu Joint Family, can he take steps to evict the defendant/appellant herein who as a tenant of suit property in the civil suit without recourse to Rent Control Proceedings?

(2)Are the courts below right in granting decree which is not prayed by plaintiff especially when he has given up his original case that his son Ramasamy Raju, second defendant in O.S.49 of 1996 has released his share? And

3)When the appellants have been granted decree for 1/54th share including this suit property of the joint family A.S.160 of 1998 relating to similar disputes regarding adjacent property, whether or not the same is binding on the parties?

6.In view of the concurrent finding of fact that the suit property and the other properties are joint family properties including Ramasami Raju, we have to decide the issue raised on that basis. We have to decide in these Second Appeals only with respect to the second relief sought for, for recovery of possession from the appellant.

7.Learned counsel appearing for the appellant, to substantiate the said claim that the lower appellate court is not correct in granting the decree for possession, has submitted that

the appellant has got right in the suit property and in the other properties, in view of the purchase of the rights of Ramasami Raju under the sale deed dated 3.3 .89 and thereby he has become the co-sharer and so without filing suit for partition, the plaintiff cannot take possession of the suit property. In support of the abovesaid submission, the learned counsel has relied on Sec.44 of the Transfer of Property Act. He has also submitted that insofar as Door No.148 is concerned, the appellant was the tenant with respect to the said property and so he can be evicted only by due process of law and not by filing civil suit.

8.To sustain the decree of the lower appellate court, the learned counsel appearing for the 1st respondent submitted that since the appellant/defendant has come forward with the plea that he purchased the said property, he cannot claim any relief over the said property as a tenant, in view of the merger and so the 1st respondent need not approach the Rent Control Court to evict the appellant. He further submitted that as a joint family manager, the 1st respondent is entitled to recover possession from the third party-alienee, of a share of the co-parcener. On that basis the learned counsel submitted that the lower appellate court is absolutely correct in decreeing the suit for possession.

9.From the abovesaid pleadings and arguments, we have to decide the issue on the basis that the appellant/Ramakrishnan has purchased only the undivided share of the joint family properties of Ramasami Raju/2nd respondent, with respect to both the properties bearing Door Nos.148 and 151. Insofar as Door No.148 is concerned, admittedly the appellant was in possession as a tenant, and insofar as Door No.151 is concerned, it is the case of the appellant that after the said purchase, he had taken possession of the same from the tenant/Ramu alias Ramayee, and he has been in possession of the said property on the basis of the said purchase. So, the issue that has to be decided now is whether the suits for recovery of possession of the said property from the appellant are sustainable in law.

10.An alienee cannot claim the status of an undivided Hindu member or co-parcener. He acquires the undivided interest of his alienor. He is also not entitled to claim joint possession with other coparcener and equally he is not entitled to demand separate possession of any part of the family property, but he is entitled to possession of that part of the family property which might fall to the share of his alienor at a partition. Such a purchaser does not become a tenantin-common with the other members. The above view of mine is supported by a number of decisions of this Court and of the Supreme Court.

11.The Full Bench of this Court in the decision in Kota Balabadra Patro v. Khetra Doss and others, Vol.XXXI M.L.J. 275, while dealing with the question regarding the right of an alienee from the member of the joint family on the basis of Sec.44 of the Transfer of Property Act, and also the scope of Sec.44 of the Transfer of Property Act, has held as follows:

"The question in this appeal is whether an alienee of a

co-parcener in a joint Hindu family is entitled to possession of the alienor's share as a tenant-in-common. There can be no doubt that so far at least as this Presidency is concerned that he has no such right. It has been ruled in a series of decisions that his only right is to obtain by a suit for partition the share to which his alienor was entitled. He is allowed to stand in the shoes of the co-parcener whose rights he has acquired and thus the equities are worked out between the parties. The point is covered by recent decisions of this Court. In Maharaja of Bobbili v. Venkataramanujulu Naidu, (1914) I.L.R.39 M. 265 s. c. 27 M.L.J.409, it was ruled by Wallis, Chief Justice and Kumaraswami Sastrri, J, that a purchaser of the undivided share of a member of a joint Hindu family does not thereby become a tenant-in-common with the other members. Sankaran Nair, J., and Bakewell, J., in Nanjaya Mudali v. Shanmuga, 1914) I.L.R.38 M 684 s.c. 26 M.L.J. 576, also laid down the law to the same effect after careful review of the Privy Council decisions bearing on the subject. The Judicial Committee's rulings in Suraj Bupsi Koer v. Sheo Persad Singh, (1979) I.L.R. 5 C.148, and Hardi Narain Sahu v. Ruder Perkash Misser, (1863)I.L.R. 10 C. 636 , clearly bear out this view of the Hindu law. The learned vakil for the respondents has referred to some rulings of the Bombay High Court but it is not necessary to consider them here as there has been a uniform course of decisions in this Presidency laying down that an alienee from a Hindu co-parcener does not thereby acquire the rights of a tenant-in-common, such as, to possession and to mesne profits. Reliance was also placed on Section 33 of the Transfer of Property Act but the rule enunciated there does not override the Hindu Law".

12.Again,in the decision in Thani Chettiar v. Dakshinamurthy Mudaliar, 68 L.W. 166, the Division Bench of this Court has held as follows:"A discussion of the legal rights on which relief is sought may be helpful to a certain extent, but ultimately the decision depends on the actual relief sought. It is true that an alienee of an undivided interest of a Hindu coparcener is not entitled to joint possession with the other coparcener and he is also not entitled to separate possession of any part of the family property. But the alienee is entitled to obtain possession of that part of the family property which might fall to the share of his alienor at a partition."

13.Further, while dealing with similar facts, the Apex Court, in the decision in Manikayala Rao v. Narasimhaswami, AIR 1966 S.C. 470, has held as follows:-

"18.Before dealing with the question as to which Article of the Limitation Act applies to the present case it is necessary to examine the legal position of persons like Sivayya who purchase shares of some of the coparceners of the Hindu Joint Family. It

is well settled that the purchaser does not acquire any interest in the property sold and he cannot claim to be put in possession of any definite piece of family property. The purchaser acquires only an equity to stand in the alienor's shoes and work out his rights by means of a partition. The equity depends upon the alienation being one for value and not upon any contractual nexus. The purchaser does not become a tenant in common with the other members of the joint family. He is not entitled to joint possession with them."

The Hon'ble Judges of the Apex Court in the said decision, while considering the entitlement of separate possession of any part of the family property of the alienee, have opined that the alienee is not entitled to joint possession of any part of the family property, and further held as follows:"In my opinion, a suit like the present one will fall within Art.144 of the Limitation Act. It is true that an alienee of an undivided interest of a Hindu coparcener is not entitled to joint possession with the other coparcener and he is also not entitled to separate possession of any part of the family property. But the alienee is entitled to obtain possession of that part of the family property which might fall to the share of his alienor at a partition. What the alienee acquires by a purchase is not any interest in specific family property but only an equity to enforce his right in a suit of partition and have the proerty alienated set apart for the alienor's share, if possible." So, from the abovesaid decisions, it is clear that the appellant cannot file a suit claiming any exclusive or joint possession of the property.

14.But the present suit is not a case where the appellant/defendant is asking for such a right, as the appellant admittedly is in possession. So the question would be, whether the 1st respondent-plaintiff can sustain the suit for recovery of possession from the appellant though he entered into possession of the said property before purchase as a tenant, and purchased the rights of the co-owner in the said property.

15.The learned counsel for the 1st respondent-plaintiff submitted that in view of the purchase of the said property by the appellant from the said Ramasami Raju, the tenancy right had been merged and so the appellant cannot claim any right as a tenant to protect his possession.

16.In the present case, the courts below have held that the appellant cannot claim that he purchased the said property itself; but he purchased only the undivided share of his vendor and thereby he acquired only the moity interest, and so the question of merger as submitted by the learned counsel for the 1st respondent cannot be countenanced. So the plaintiff could have invoked the provisions of the Tamil Nadu Buildings (Lease & Rent Control) Act, hereinafter called 'The Act'. The subsequent acquisition of the undivided share cannot stand in the way of the

landlord to file a petition for eviction under the Act by terminating the lease, unless the tenant acquires the entire interest of the landlord.

17.While dealing with the scope of maintainability of Rent Control Proceedings against the tenant who subsequently acquired moity interest, the Division Bench of this Court, following the decisions of the Apex Court in the decision in Indra Perfumary v. Mothilal and others, 1970 R.C.J.49 (S.C.), and also the decision of this Court in Kuppuswami v. Balagurumurthi, 1965-1 M.L.J. 86, has held as follows:-

"On the basis of the aforesaid decision of the Supreme Court it can safely be held that by virtue of their purchase no doubt respondents 1 and 2 will be co-owners, but at the same time the tenancy will not be wiped out and they will continue to be tenants in respect of the share or interest belonging to the petitioners. That is to say, respondents 1 and 2 have two capacities one as co-owners in respect of the share purchased by them, and another as tenants in respect of the remaining share belonging to the petitioners, at any rate, in respect of the rent that may be payable by them to the petitioners."

18.Having held that the Rent Control Proceedings are maintainable against the tenant who purchased the moity interest subsequently, the Division Bench, in the abovesaid decision, with a view to promote substantial justice, as held by the Apex Court in Venkateswarulu v. Motor and Generals Traders,A.I.R. 1975 S.C.1409, has come to the conclusion that the tenants have already been in possession of the building and so the relief that could be granted in the circumstances of the case would be to direct the landlord to be in joint possession also with the tenants leaving it open to the landlord to sue for partition of his separate share in the property. On the basis of the abovesaid finding, the Division Bench of this Court in the said decision has further concluded as follows:-

"So far as respondents 1 and 2 are concerned, taking note of subsequent events, namely, of their acquisition of a share in the building, no order for eviction need be passed against them, leaving it open to the parties to seek appropriate relief by way of partition and separate possession of their respective shares in the premises in question."

19.Though the learned counsel appearing for the appellant has relied on Sec.44 of the Transfer of Property Act to sustain his possession, I am not dealing with the same in view of the abovesaid findings.

20.With respect to the shop bearing Door No.151, the appellant is not claiming any right as a tenant, but he is trying to safeguard his possession only on the basis of the purchase of

moity interest from the said Ramasami Raju, the co-parcener. His possession is not in dispute as the plaintiff himself has filed the suit for possession against the appellant.

21.So, even with respect to the said property, as held by the Division Bench of this Court in 97 L.W. 334 (supra), the appropriate relief could be, a declaration that the possession of the appellant should be construed as joint possession by the plaintiff also, and separate possession could be taken by filing a suit for partition. On the basis of the reasonings given in the said decision of the Division Bench, the plaintiff is not entitled to get possession till the relief of partition and separate possession is decided before the appropriate court.

22.Learned counsel appearing for the 1st respondent relied on the decision in Thangamani v. Natesan, (2001)9 SCC 299, in support of his submission that suit for recovery of possession against the tenant who purchased the land can be sustained. But, unfortunately, the said decision will not apply to the facts of the present case. In the said decision, under the agreement entered into between the landlords and tenant, the tenant failed to pay the sale consideration and so the landlords filed the suit for recovery of possessionof the land. It was also found on the basis of the recitals in the agreement that the tenants agreed to surrender their possession of the land to the landlords, pursuant to the said agreement, and on the basis of the above said facts, the Apex Court further held that after such surrender, the defendants-tenants were in possession only as agreement holders, and so the decree for delivery of possession as granted by the courts below are sustainable. The said decision has no application to the facts of the present case, as the appellant herein had
purchased the moity interest, and so, as held by the Division Bench cited supra, his possession need not be disturbed till appropriate relief is obtained for partition and separate possession of the said property.

23.In view of the above discussion, the judgments and decrees of the lower appellate court insofar as they relate to the decree for possession cannot be sustained. Hence they are alone set aside and these Second Appeals are allowed partly. No costs.

13.2.2002. Index:yes/no

To: 1.The Principal Dist. Judge, Sivaganga (with records) 2.The Sub-Judge, Sivaganga. 3.The Section Officer, V.R.Section, High Court, Chennai.104.

Sks

K.GOVINDARAJAN,J.

Pre-delivery judgment,
S.As.384& 385/00.
13.2.02.